



both the law and the State's allegations by Defendant Tyson Poultry in its reply brief. The supplemental brief, for instance, sets the record straight, without limitation, as to the following:

a. Defendant Tyson Poultry's incorrect contention in its reply brief that *Hallstrom v. Tillamook County*, 110 S.Ct. 304 (1989), addressed the issue of compliance with the regulatory notice requirements under the Resource Conservation and Recovery Act ("RCRA"), when in reality *Hallstrom* pertained solely to the issue of compliance with the statutory notice requirements under RCRA;

b. Defendant Tyson Poultry's incorrect contention in its reply brief that the notice provisions in the Clean Water Act ("CWA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") are analogous to the notice provisions in RCRA, when in reality RCRA, unlike the CWA and CERCLA, contains no statutory mandate requiring compliance with the regulatory notice provisions;

c. Defendant Tyson Poultry's reliance in its reply brief, on *Darbouze v. Chevron Corp.*, 1998 WL 42278 (Jan. 8, 1998 E.D. Pa.), an unreported decision whose reasoning is wholly flawed in that it fails to appreciate that RCRA was amended in 1984;

d. Defendant Tyson Poultry's incorrect contention in its reply brief that the State may not bring a RCRA citizen suit claim ignores clear Supreme Court language to the contrary, and Defendant Tyson Poultry's reliance upon *United States v. City of Hopewell*, 508 F.Supp. 526 (E.D. Va. 1980), a CWA case, suffers the same legal flaws as *California v. Department of the Navy*, 631 F.Supp. 584 (N.D. Cal. 1986), the case upon which it relied in its initial brief.

Accordingly, the State submits that its proposed supplemental brief will indeed assist the Court in understanding and resolving the issues before it. The stridency with which Defendant

Tyson Poultry opposes the State's Motion for Leave simply underscores this fact. Defendant Tyson Poultry would plainly like the incorrect contentions of its reply brief to stand uncorrected. That, however, would not serve the interests of justice.

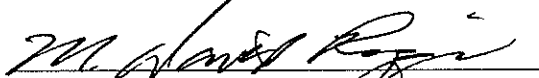
3. Contrary to Defendant Tyson Foods' assertion, the State's Motion for Leave accurately recited that Defendant Tyson Poultry objected to the filing of a supplemental brief by the State. The State was under no obligation to recite a counter-proposal advanced by Defendant Tyson Poultry that the State had rejected, and that merely reflected Defendant Tyson Poultry's unfounded belief that it was entitled to the last word. Further, Defendant Tyson Poultry's request to file its own supplemental brief, unlike the request of the State, is unsupported by any articulated need, other than to in fact have the last word. Consequently, since Defendant Tyson Poultry does not articulate any need for a response, the Court should conclude the State's supplemental brief creates no need for further clarification by Defendant Tyson Poultry.

4. Allowing the State's supplemental brief to be filed is within the Court's discretion. *See* LCivR 7.1(h). The fundamental issue presented is whether the supplemental brief assists the Court in understanding and resolving the issues before it. The State respectfully submits that its supplemental brief will assist the Court and should be permitted to be filed and considered.

WHEREFORE, this Court should grant the State's Motion for Leave to File a Supplemental Brief in Opposition to Tyson Poultry, Inc.'s Motion to Dismiss Count 3 of the First Amended Complaint.

Respectfully Submitted,

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January 10, 2006.

### **CERTIFICATE OF SERVICE**

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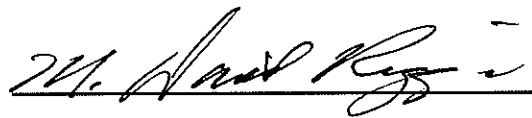
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A handwritten signature in black ink, appearing to read "M. Andrew Regan", is written over a horizontal line.